

**MINUTES**

**MONTANA SENATE  
57th LEGISLATURE - SPECIAL SESSION  
COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIR LORENTS GROSFIELD**, on August 6, 2002 at 11:00 A.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chair (R)  
Sen. Duane Grimes, Vice Chair (R)  
Sen. Al Bishop (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Walter McNutt (R)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 17, 8/3/2002  
Executive Action: SB 17 DPAA

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**HEARING ON SB 17**

**VICE CHAIR GRIMES** opened the hearing and conducted the hearing throughout.

**Sponsor:** SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, MT

**Proponents:** Mike McGrath, Montana Attorney General  
Bill Slaughter, Director, Dept. of Corrections  
Donetta Klein, Executive Director, MT Coalition  
Against Domestic and Sexual Violence  
Kathy McGowan, MT Sheriffs' and Peace Officers'  
Assoc. and MT County Attorneys' Assoc.  
Troy McGee, Chief, Helena Police Dept.  
Dave Jeseritz, MT Police Protective Assoc.

**Opponents:** None

**Opening Statement by Sponsor:** SEN. CHRISTIAENS, SD 23, Great Falls presented SB 17. This bill was requested by the Dept. of Justice. The State of Montana has been penalized because Montana was lacking in doing some things in statute regarding the registration of sex offenders. Since Montana had failed to comply with several federal statutes, the state had lost 10 percent (approximately \$253,800) of the federal funds awarded under the Edward Byrne Memorial Grant Program. These monies could certainly be used in law enforcement in various communities. This bill would correct some of those deficiencies and take full advantage of the funds. The requirements for registration of sex offenders is important in that it will provide more safety for the citizens of Montana. There are several people and agencies that were in attendance to testify in support of the bill.

**Proponents' Testimony:**

**Mike McGrath, Montana State Attorney General.** He stated that he also serves on the Montana Board of Crime Control. He was very pleased to see this bill come forward at the Special Session of the Legislature and handed out an explanation of the proposed legislation **EXHIBIT(jus02a01)**. As was indicated, the state receives money from the federal government in the form of grants called Byrne Memorial money. Montana receives about \$2.5 million in Byrne money. The money is used primarily for the local drug task forces that are in most of the communities around the state. It is administered by the Board of Crime Control. Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended (Pam Lychner Act). This Act requires certain offenders, convicted of sex offenses, to register and obtain lifetime registration as sex offenders. One of the provisions of that Act required states to impose the lifetime registration as a condition to receive those monies. There are additional requirements that would dealing with sex offenders who are students in the Montana university system who have been convicted of sexual offenses in other states.

Basically, this bill amends Montana's Sex Offenders' Registration Act to add the categories of kidnaping, false imprisonment and solicitation of a minor to commit prostitution. Those provisions currently are not covered under Montana's Sex Offenders' Registration Act. If a person is convicted of a second offense of these crimes they would be required to register lifetime. Under Montana's current statutory law, a person who has been designated a level three sex offender, which is the most dangerous and are determined to be predators, could not go back at a later date in court and have that designation changed. That is the issue that has created the biggest problems for federal law enforcement agencies and that is the reason Montana is being penalized the 10 percent. The bill would also clarify that an offender, convicted of sexual intercourse without consent against a victim under the age of 12, would have to register for life.

**Mr. McGrath** informed the committee that **Mr. John MacMaster, Legislative Staff**, had reviewed the bill and found a small flaw and had prepared an amendment **EXHIBIT(jus02a02)SB001701.ajm**. His office has looked at the amendment and it essentially states that if a person in Montana has been convicted of a sex offense, they are required by legislation to attend sex offender training treatment in the prison and also are required to comply with some other requirements when released. This amendment makes it clear that because kidnaping, false imprisonment and solicitation of a minor would now be included, a person convicted of kidnaping an adult and does not commit a sexual act in the course of the kidnaping crime they are not required to register as a sex offender and would not be required to take sex offender treatment in prison.

**Mr. McGrath** appreciated the help of **Mr. MacMaster** and his office supports the bill and the amendment.

**Bill Slaughter, Director, Dept. of Corrections.** The Governor's office and the Attorney General's office support the bill fully. As a member of the Board of Crime Control for the past 12 years, he has worked with Attorney General McGrath on these issues daily. The addition of Montana's seven drug task forces is probably the most significant change in law enforcement in Montana. It focuses on drug crime and all involved are doing a great job. These people have worked together and there is tremendous cooperation between agencies. This bill means greater public safety for Montanans and this money will help them in doing their job.

**Donetta Klein, Executive Director, MT Coalition Against Domestic and Sexual Violence.** The Coalition supports SB 17 which will implement critical changes to Montana's Sexual and Violent

Offender Act and will bring Montana into compliance with federal law. The monies received by the state will fund much needed community drug enforcement and violence prevention programs that benefit victims of crime. The changes proposed will also enhance protection for victims of sexually violent predators by requiring lifetime registration. A safety feature for both victims and communities. She supports the bill and the amendment.

**Kathy McGowan, MT Sheriffs and Peace Officers' Assoc. and MT County Attorneys' Assoc.** Both organizations wholehearted support SB 17 and would appreciate the committee's support also.

**Troy McGee, Chief, Helena Police Dept.** He represents the MT Chiefs of Police Assoc. The money that is received for the seven local drug task forces is very important. The task force in Helena is called the Missouri River Drug Task Force and covers seven counties and seven cities and towns from Lewis & Clark County to Sweetgrass and Madison Counties. He urged support for SB 17.

**Dave Jeseritz, MT Police Protective Assoc.** The Assoc. supports SB 17 and urged support from the committee.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**VICE CHAIR DUANE GRIMES** asked about the amendment that was proposed and how it addressed the issue of kidnaping. He addressed his question to **Attorney General McGrath**. **Mr. McGrath** said that his understanding of that issue was what would happen when kidnaping did involve sexual offenses. There are some states that have kidnaping statutes but no specific statutes dealing with sexual assault to children. The amendment makes it clear that persons who were convicted of the offense of kidnaping would not necessarily be required to attend sex offender treatment or undergo HIV testing unless there was a sexual offense involved in that crime.

**SEN. MIKE HALLIGAN** asked **John MacMaster** to explain the amendment. **Mr. MacMaster** informed the committee that there is a code section that states: a person cannot enter a plea of nolo contendere if they have committed a sexual offense. With the redefinition of sexual offense in the bill to include kidnaping, etc. they would not be able to enter that nolo contendere plea. The amendment provides for the exclusion of kidnaping, etc. if no sexual offense had been committed.

**VICE CHAIR GRIMES** asked if a person could plead nolo contendere if that person committed a kidnaping and there was a sexual offense committed. **Mr. MacMaster** pointed to amendment No. 2, (4). His understanding is the court does not want to accept a nolo contendere plea to a sexual offense unless that person agrees to take the prison treatment program. Section 2, (3) addresses this issue: An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

**SEN. RICK HOLDEN** asked if Section 1, (6) (a) was required to meet the federal statutes. **Mr. McGrath** responded that yes it was.

**VICE CHAIR GRIMES** wanted to know if there was anything the Legislature could or should do in regard to those people who plea bargain and thereby escape the prison treatment program. **Mr. McGrath** replied that the point was well taken and was an issue that prosecutors struggled with. Most prosecutors in Montana no longer plea bargain away sex offenses and are aggressive on most sex offenses if they can prove that offense. A judge does have the authority depending on the facts of the case and may well have the authority to order a person into treatment even if they don't plead to that crime. There may be a bill coming up in the regular session that would give the sentencing judge more authority to impose a sentence even if the person didn't specifically plead to the crime that the sentence addresses.

**VICE CHAIR GRIMES** inquired if most kidnaping cases involved sexual offenses. **Mr. McGrath** did not have any statistics but from his experiences as a prosecutor

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most kidnaping cases involving juveniles were usually custodial disputes either between parents or some relative and those did not involve sexual offenses.

**Closing by Sponsor:**

**SEN. CHRISTIAENS** pointed out that he felt the amendments were necessary and points out the judge's discretion as to what they can order at time of sentencing. The reason for the bill is to make sure that those who have been convicted of sex offenses are registering so that the public has some degree of safety, law enforcement knows who is in the state and that Montana is in compliance with federal mandates. The end result is that the money that funds the drug task forces around the state will be

coming into the state. One of the things that has been proliferating in the last few years is the methamphetamine problems. Montana's task forces are doing a good job in assisting in apprehension and conviction. He urged a Do Pass As Amended.

**EXECUTIVE ACTION ON SB 17**

**Motion/Vote:** SEN. HALLIGAN moved that SB 17 BE AMENDED (SB001701.ajm). Motion carried unanimously.

**Motion:** SEN. HALLIGAN moved that SB 18 DO PASS AS AMENDED.

**Discussion:** VICE CHAIR GRIMES made comment that the interim committee recommended passage of SB 17.

**Vote:** Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 11:35 A.M.

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SEN. LORENTS GROSFIELD, Chair

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MARY GAY WELLS, Secretary

LG/MGW

**EXHIBIT**(jus02aad)